

FILED
DISTRICT COURT OF GUAM

OCT 26 2007

JEANNE G. QUINATA
Clerk of Court

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IN THE DISTRICT COURT OF GUAM

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Plaintiff,

vs.

LEO PALACE RESORT,

Defendant.

CIVIL CASE NO. 06-00028

JENNIFER HOLBROOK,
VIVIENE VILLANUEVA and
ROSEMARIE TAIMANGLO,

Plaintiff-Intervenors,

vs.

MDI GUAM CORPORATION dba LEO
PALACE RESORT MANENGGON HILLS
and DOES 1 through 10,

Defendant.

**PLAINTIFF-INTERVENORS'
MOTION FOR LEAVE TO FILE
SUR-REPLY IN SUPPORT OF THE
EEOC'S OPPOSITION TO
DEFENDANT'S MOTION FOR
PARTIAL SUMMARY JUDGMENT**

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ORIGINAL

1 NOW COMES Plaintiff-Intervenors in the above-captioned case, JENNIFER HOLBROOK,
2 VIVIENE VILLANUEVA and ROSEMARIE TAIMANGLO, and respectfully move this Honorable
3 Court for leave to file herewith a Sur-Reply in Support of the EEOC's Opposition to Defendant's
4 Motion for Partial Summary Judgment.

5 Local Rule 7.1 which governs motion practice is silent as to the applicability to file a Sur-
6 Reply. Plaintiff-Intervenors think the Sur-Reply will assist the Court in evaluating the issues raised
7 by Defendant Leo Palace in its Reply Brief and should be afforded the opportunity to do so. Thus,
8 the proposed Sur-Reply that Plaintiff-Intervenors seek to file (submitted herewith) will address these
9 issues and complete the record for the Court's review.

10 For these reasons, Plaintiff-Intervenors respectfully asks that this motion be granted.

11 Respectfully submitted this 26th day of October, 2007.

12 **TEKER, TORRES & TEKER, P.C.**

13
14 By: 

PHILIP TORRES, ESQ.

Attorneys for Plaintiff-Intervenors,
*Jennifer Holbrook, Rosemarie
Taimanglo and Vivienne Villanueva*

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Defendant.

**PLAINTIFF-INTERVENORS'
SUR-REPLY TO DEFENDANT'S
MOTION FOR PARTIAL
SUMMARY JUDGEMENT**

///

ORIGINAL

1 Plaintiff-Intervenors in the above-captioned case, JENNIFER HOLBROOK, VIVIENE
2 VILLANUEVA and ROSEMARIE TAIMANGLO, through undersigned counsel, hereby file their
3 Sur-Reply to Defendants Reply to Plaintiffs Opposition to the Motion for Partial Summary Judgment
4 filed on September 24, 2007.

5 I.

6 **A GENUINE ISSUE OF MATERIAL FACT EXISTS THAT DEFENDANT**
7 **CREATED A HOSTILE WORK ENVIRONMENT, RETALIATED AGAINST**
8 **PLAINTIFF-INTERVENORS AND CONSTRUCTIVELY TERMINATED**
9 **THEM.**

10 In its Reply brief, Defendant minimizes the damage caused to Plaintiff-Intervenors at the
11 hands of management of Leo Palace. They attempt to simplify the hostile work environment created
12 by the failure of Leo Palace to take any steps to remedy the sexual harassment situation they created
13 by stating that “most jobs aren’t fun” and “most bosses are not nice” and “reasonable people know
14 this”. (Reply Brief P.5) Further, they state that legally speaking the Plaintiff- Intervenors were only
15 entitled to come to work, do their jobs and get paid.

16 Defendant does not deny that Plaintiff-Intervenors suffered repeated incidents of sexual
17 harassment. Defendant does not deny that after the sexual harassment claims were reported they
18 failed to investigate and failed to take any action. What they are denying is that after Camacho was
19 fired, that Plaintiff-Intervenors continued to be subjected to a hostile work environment created by
20 defendant. Also, defendant denies that they retaliated against Plaintiff-Intervenors and that they
21 were constructively terminated.

22 The EEOC guidelines describe hostile work environment harassment as “conduct [which]
23 has the purpose or effect of unreasonably creating an intimidating, hostile *or* offensive working
environment.” *Ellison v. Brady*, 924 F.2d 872, 876 (9th Cir. 1991)(citing *Rogers v. E.E.O.C.* 454

1 F.2d 234 (5th Cir.1971) (See also **29 CFR § 1604.11 (a)(3)**) . Further, the court in *Ellison* stated that
2 to state a claim under Title VII, sexual harassment “must be sufficiently severe or pervasive to alter
3 the conditions of the victim’s employment and create an abusive working environment. *Id.* It is the
4 harasser’s conduct which must be pervasive or severe, not the alteration in the conditions of
5 employment. *Id.* at 878. The standard applied to establish a prima facie case of hostile environment
6 sexual harassment is what a reasonable woman would consider sufficiently severe or pervasive to
7 alter the conditions of employment and create an abusive working environment. *Id.* at 889 (*citing*
8 *Andrews v. City of Philadelphia*, 895 F.2d 611, 626. (3rd Cir. 1990). In evaluating the severity and
9 pervasiveness of sexual harassment, we should focus on the perspective of the victim. *Ellison* at
10 878. If we only examined whether a reasonable person would engage in allegedly harassing conduct,
11 we would run the risk of reinforcing the prevailing level of discrimination. Harassers could continue
12 to harass merely because a particular discriminatory practice was common, and victims of
13 harassment would have no remedy. *Id.*

14 Defendant alleges that after the sexual harassment incidents were reported and they were
15 threatened with a lawsuit, the management of Leo Palace’s treatment of the Plaintiff-Intervenors
16 amounted to nothing more than giving them the “cold shoulder”. (Reply Brief P. 2.) As articulated
17 in *Ellison*, the court does not evaluate what the harasser did, but instead focuses on the effect of the
18 treatment by the harasser on a reasonable woman. In the instant matter, the proper analysis is would
19 a reasonable woman feel that the conditions of employment were altered when after complaining of
20 sexual harassment that her hours were reduced, she is given three days off per week instead of two
21 (despite the resort being short staffed), she was yelled at by the manager for complaining about
22 harassment and was no longer being considered for an administrative assistant position, all of which
23 happened to Jennifer Holbrook and was known by the other Plaintiff-Intervenors who had to deal

1 with similar hostility from Leo Palace management. The Ninth Circuit would agree that Plaintiff-
2 Intervenor's feelings of stress and emotional distress from working in what they reasonably
3 perceived as an offensive working environment with hostility and intimidation from management,
4 notwithstanding Camacho's termination, was a reasonable reaction to the treatment these women
5 were subjected to at the hands of Leo Palace. Defendant is simply trying to trivialize the extent of
6 the damage caused by the management and employees of Leo Palace. The *Ellison* court discussed
7 that by acknowledging and not trivializing the effects of sexual harassment on reasonable women,
8 courts can work towards ensuring that neither men nor women will have to "run a gauntlet of sexual
9 abuse in return for the privilege of being allowed to work and make a living." *Ellison* at 879, 880
10 (citing *Henson v. Dundee*, 682 F.2d 897 (11th Cir. 1992)).

11 Plaintiff-Intervenors have clearly established that management failed to take any steps to
12 investigate or stop the sexual harassment despite repeated complaints. When Leo Palace finally
13 decided to take action they fired Camacho. However, they did not discipline any of the managers who
14 failed to take action. None of the management at Leo Palace talked to the Plaintiff-Intervenors to
15 address any of these issues nor was there any Title VII training of management so that they would
16 understand sexual harassment, retaliation and the employees federally protected rights. Instead, their
17 schedules were changed and Plaintiff-Intervenors were basically shunned by the management. They
18 were forced to work with supervisors who were treating them differently. When viewing the totality
19 of the circumstances as they existed, reasonable women in a similar situation would feel as though
20 the conditions of their employment were altered and offensive and they were being retaliated against.
21 As such, the hostile work environment continued. The firing of Camacho did not remove the hostile
22 work environment, it simply changed it. The offenders now became the managers and supervisors.

23 In their reply brief, Defendant discusses the content of the therapy sessions in which Ms.

1 Taimanglo and Ms. Holbrook participated. (Reply Brief P. 3-5). Defendant argues that the women
2 did not sufficiently describe how traumatized they were by the sexual harassment they endured. That
3 is not relevant in determining whether a hostile work environment exists. Conduct can unreasonably
4 interfere with work performance without causing debilitation and without seriously affecting an
5 employees well-being. *Ellison* at 878. A hostile work environment can exist when the emotional
6 and psychological stability of the worker is not completely destroyed. *Id.* Defendant ignores that
7 the Plaintiff-Intervenors sought psychological treatment in August 2004 and their therapists
8 recommended that all three take two weeks medical leave to help their psychological well being.
9 Defendants argument that Plaintiff-Intervenors did not describe their emotional distress to their
10 satisfaction has no bearing on the existence of a hostile work environment.

11 Defendant contends that Plaintiff-Intervenors were not constructively terminated. This a
12 question of fact for the jury to decide. However, the facts will show that after Camacho was fired,
13 Plaintiff-Intervenors continued to work for Leo Palace because they wanted to keep their jobs. They
14 worked with the same employees and for the same managers and supervisors who initially failed to
15 take any action to investigate their claims. As previously discussed, no training was provided to the
16 managers and supervisors. Plaintiff-Intervenors were under an extreme amount of stress at work and
17 felt overwhelmed. As discussed in the opposition filed by the EEOC, the Plaintiff-Intervenors
18 thought that once Camacho was terminated the working conditions would improve. Unfortunately,
19 due to the unlawful actions by management they did not. In fact, after receipt of the August 16,
20 2004 letter from Mr. Torres, Mr. Maruyama confronted Ms. Holbrook and demanded to know why
21 she was suing the company. (EEOC Opposition P. 13:7-9). Ms. Taimanglo testified that after
22 returning from a two week leave that was recommended by her therapist, Mr. Maruyama asked her
23 if there were any sexual harassment reports. (EEOC Opposition P. 7:16-19). That behavior is

1 clearly over and above giving her the "cold shoulder". That is one of many examples cited in the
2 Opposition filed by the EEOC of managements treatment of the Plaintiff-Intervenors. The evidence
3 presented to date demonstrates that they had no reasonable choice but to resign. The conditions of
4 employment had become intolerable. The sexual harassment they suffered at the hands of Camacho,
5 the delayed action on the part of Leo Palace and the continued hostile work environment perpetuated
6 by management left them with no choice. In discussing the way they were being treated, Ms.
7 Holbrook testified that she "just wanted to get out of there" and Ms. Taimanglo testified that "she
8 had enough and could not take it anymore."

9 **II.**

10 **CONCLUSION**

11 A genuine issue of material fact exists to support Plaintiff-Intervenors' claims that Defendant
12 created a hostile work environment, they were retaliated against and constructively discharged, and
13 thus, summary judgment is not warranted. Plaintiff-Intervenors request that Defendants Partial
14 Motion for Summary Judgment be denied.

15 *Respectfully submitted* this 26th day of October, 2007.

16 **TEKER, TORRES & TEKER, P.C.**

17
18 By: 

PHILLIP TORRES, ESQ.

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